MARZUKI ABDUL AZIZ

v.

KETUA POLIS NEGARA & ANOR

COURT OF APPEAL, KUALA LUMPUR
SITI NORMA YAAKOB JCA
DENIS ONG JCA
HAIDAR MOHD NOOR JCA
[CIVIL APPEAL NO: P-01-23-1996]
8 MAY 2003

ADMINISTRATIVE LAW: *Public servants - Dismissal from police force - Dismissal of police inspector by Deputy Inspector General of Police - Propriety of decision-making process - Show-cause and dismissal letters signed by unidentified officer on behalf of Inspector General of Police and assistant head of secretariat for discipline - Whether said officer a proper signatory - Whether said officer's act of writing and signing said letters constituted part of Deputy Inspector General of Police's decision-making process - Whether dismissal bad in law*

POLICE: *Disciplinary proceedings - Dismissal - Dismissal of police inspector by Deputy Inspector General of Police - Propriety of decision-making process - Show-cause and dismissal letters signed by unidentified officer on behalf of Inspector General of Police and assistant head of secretariat for discipline - Whether said officer a proper signatory - Whether said officer's act of writing and signing said letters constituted part of Deputy Inspector General of Police's decision-making process - Whether dismissal bad in law*

The sole issue in the instant appeal was whether the decision-making process leading to the dismissal of the appellant (from the police force) by the Deputy Inspector General of Police was flawed. It was contended that the officer ('Abdul Aziz Hassan') who signed both the show-cause and dismissal letters issued by the Inspector General of Police was not the proper signatory or person to communicate the decisions made by the Deputy Inspector General of Police in the disciplinary proceedings to the appellant. Abdul Aziz Hassan had signed the two said letters on behalf of both the Inspector General of Police and the assistant head of the secretariat for discipline. Apart from questioning the authority of Abdul Aziz Hassan to sign the said letters, the appellant also pointed out that he had signed them on behalf of the Inspector General of Police when in actual fact the disciplinary

proceedings were conducted by the Deputy Inspector General of Police. It was further argued that the said letters should have been signed by the assistant head of the secretariat for discipline.

Held:

Per Siti Norma Yaakob JCA

[1] Pursuant to the Instrument of Delegation (PU(B) 621), the Deputy Inspector General of Police has the power to initiate disciplinary proceedings and to impose the punishment of dismissal against the appellant. Consequently, the decisions of the Deputy Inspector General of Police to issue the show-cause letter against the appellant and, thereafter, to dismiss the appellant from the force, were made well within his powers. On the other hand, the writing and signing of both the show-cause and dismissal letters by Abdul Aziz Hassan were not a part of the decision-making process of the Deputy Inspector General of Police which culminated in the appellant's dismissal; they were merely administrative actions or functions. Abdul Aziz Hassan was not involved in the decision-making process. (pp 318 f-h & 319 a-g)

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation Of Headotes*

Isu tunggal dalam rayuan semasa adalah sama ada proses membuat keputusan oleh Timbalan Ketua Polis Negara, yang mengakibatkan pembuangan kerja responden (daripada pasukan polis), adalah cacat. Telah dihujah bahawa pegawai yang menandatangani kedua-dua surat tunjuk sebab dan surat pembuangan kerja ('Abdul Aziz Hassan') bukan merupakan pegawai atau penandatangan yang sah bagi menyampaikan kepada perayu keputusan yang dibuat oleh Timbalan Ketua Polis Negara dalam prosiding tatatertib. Abdul Aziz Hassan telah menandatangani kedua-dua surat tersebut bagi pihak Ketua Polis Negara dan juga Penolong Ketua Urusetia bagi disiplin. Selain mempersoalkan autoriti Abdul Aziz Hassan untuk menandatangani kedua-dua surat tersebut, perayu juga berhujah bahawa Abdul Aziz Hassan sebenarnya telah menandatangani bagi pihak Ketua Polis Negara, walhal prosiding tatatertib dijalankan oleh Timbalan Ketua Polis Negara. Ditegaskan selanjutnya bahawa surat-surat tersebut sepatutnya ditandatangani oleh Penolong Ketua Urusetia bagi disiplin.

Diputuskan:
Oleh Siti Norma Yaakob HMR

[1] Berdasarkan Suratcara Delegasi (PU(B) 621), Timbalan Ketua Polis Negara mempunyai kuasa untuk memulakan prosiding disiplin dan untuk mengenakan hukuman buang kerja terhadap perayu. Berikutan itu, keputusan Timbalan Ketua Polis Negara untuk mengeluarkan surat tunjuk sebab terhadap perayu dan, selepas itu, membuang kerja perayu dari pasukan, adalah dibuat dalam bidang kuasanya. Sebaliknya, penulisan dan penandatanganan kedua-dua surat tunjuk sebab dan surat pembuangan kerja oleh Abdul Aziz Hassan yang berakhir dengan pembuangan kerja perayu bukan merupakan sebahagian dari proses membuat keputusan oleh Timbalan Ketua Polis Negara; ianya hanyalah fungsi atau tindakan administratif. Abdul Aziz Hassan tidak terlibat dengan proses membuat keputusan.

Rayuan ditolak.]

For the appellant - Karpal Singh; M/s Karpal Singh & Co
For the respondents - Zaitun Zawiyah Puteh SFC

[Appeal from High Court, Pulau Pinang; Civil Suit No: 21-7-1990]

Reported by Gan Peng Chiang

JUDGMENT

Siti Norma Yaakob JCA:
The only issue raised in this appeal is whether there had been a flaw in the decision making process when the Deputy Inspector General of Police (Deputy IGP) decided to terminate the services of the appellant. The alleged flaw is whether the signatory to two letters issued by the 1st respondent is the proper signatory to communicate decisions made by the Deputy IGP in disciplinary proceedings commenced against the appellant.

The first letter dated 16 April 1988 is a show cause letter addressed to the appellant informing him that the Deputy IGP had decided to take disciplinary action against him with a view to his dismissal following complaints of absence from work without leave or without prior permission on the days mentioned in the letter. The appellant was also invited to give his written explanation within 16 days of the receipt of the letter failing which the Deputy IGP would take whatever action he deemed necessary.

The letter was signed by one, Abdul Aziz bin Hj. Hassan (Abdul Aziz) on behalf of the Penolong Ketua Urusetia, Ketua Polis Negara (Tatatertib) and on behalf of the 1st respondent.

The second letter is dated 7 March 1989, also addressed to the appellant informing him that after considering his representations to the charges of absence without leave, the Deputy IGP has decided to dismiss him from the police force effective from the date of the receipt of the letter. This letter is again signed by Abdul Aziz on behalf of the Penolong Ketua Urusetia, Ketua Polis Negara (Tatatertib) and on behalf of the 1st respondent.

Before us as well as in the court below, the appellant questioned the status of Abdul Aziz in signing the two letters on the grounds that firstly there is no evidence as to his official capacity and secondly he had signed the two letters on behalf of the 1st respondent when in substance the disciplinary proceedings were conducted by the Deputy IGP. It is also the appellant's contention that both the letters should have been signed by the Penolong Ketua Urusetia, Ketua Polis Negara (Tatatertib). Failure to do so in this case has rendered his dismissal null and void.

It is not disputed that under the Instrument of Delegation, P.U.(B) 621, the Deputy IGP has been delegated the power to initiate disciplinary proceedings including the power to impose the punishment of dismissal for all senior police officers of the rank of Probationary Inspectors up to and including the Chief Inspector. At the material time the appellant was a Police Inspector and fell in the category of officers over whom the Deputy IGP can initiate disciplinary action.

It must be remembered that what we are most concerned with in this appeal is whether the decision making process leading to the dismissal of the appellant has been rightly and legally followed and not the decision to dismiss. We are therefore to review whether in arriving at the decision to dismiss, the procedure in arriving at that decision has been strictly adhered to.

As we have pointed out, the Deputy IGP has been delegated with all the powers to initiate disciplinary proceedings against the appellant under the Instrument of Delegation, P.U.(B) 621. Vested with that power he had decided to issue the show cause letter, and directed it to be sent to the appellant. This was the first letter. Upon receipt of the appellant's representations the Deputy IGP had deliberated upon them and decided that dismissal was the only punishment to meet the many instances of absence

without leave on the part of the appellant. He had then directed that his decision to dismiss be communicated to the appellant and this was done through the second letter. Under these circumstances we say that the decision making process has been done by the one and only person who has been delegated to do so namely the Deputy IGP. The writing of the two letters does not form part of the decision making process as the two letters merely convey the directives and decisions of the Deputy IGP and form part of the administrative functions of the Deputy IGP for which an officer can be directed to execute. This is clear from the opening words of the first letter which states as follows: "Adalah diarah memaklumkan ..." Likewise the second paragraph of the second letter contains the following words:

> Dengan ini adalah dimaklumkan bahawa setelah menimbang representasi anda dengan teliti dan saksama, Y.Bhg. Tan Sri Timbalan Ketua Polis Negara memutuskan ...

The two letters were written on the police letter head and based on the opening words in the two letters as aforesaid, Abdul Aziz must have been a Senior Officer in the police force and the fact that his official status had not been identified on the two letters does not render the decision to dismiss made by the Deputy IGP to be contrary to law. Abdul Aziz does not feature in the decision making process. What he did was merely to convey the decisions of the Deputy IGP, administrative acts which do not fall within the category of the decision making process.

Likewise there is no merit to the objection that Abdul Aziz had no authority to sign the two letters on behalf of the 1st respondent as the latter did not conduct the disciplinary proceedings.

Whilst we appreciate that the disciplinary proceedings were conducted by the Deputy IGP and not by the 1st respondent, it must not be forgotten that the appellant was employed by the 1st respondent as the agent of the 2nd respondent. The appellant has pleaded and acknowledged this and has cited both the 1st and 2nd respondents as parties to this civil suit. As such when Abdul Aziz signed the two letters on behalf of the 1st respondent, he did so on behalf of the appellant's employer. This cannot be faulted against the respondents.

For the reasons given in this judgment, we had dismissed this appeal with costs and ordered that the deposit be paid out to the respondents to account of their taxed costs.